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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

FRED CONNER, Plaintiff and Appellant, v. WHITELEY TIRE AND OIL COMPANY, Defendant and Respondent.	A123319 (Humboldt County Super. Ct. No. DR 06 0793)

I.

INTRODUCTION

Appellant Fred Conner (Conner) appeals from a summary judgment granted as to his negligence complaint against respondent Whiteley Tire and Oil Company (Whiteley), and from the denial of a motion for reconsideration. We affirm.

II.

FACTS AND PROCEDURAL HISTORY

On December 3, 2004, Jonathan Weltsch (Weltsch) bought a used flatbed truck from Whiteley for $20. Before the sale, the truck had not been driven in years and was registered as nonoperational. Prior to moving the truck, Whiteley and Weltsch completed and submitted a release of liability to the Department of Motor Vehicles (DMV). Also on December 3, 2004, Weltsch obtained a vehicle moving permit from the DMV. The permit allowed him to move the truck on public roads to a new storage location. While Weltsch was driving on the highway, the wind lifted the entire roof off of the truck and into the air. Conner's windshield was struck by the flying roof, causing damage.

Conner's complaint stated a single cause of action for negligence against Weltsch and Whiteley, and alleged they were co-owners of the truck. It was also alleged that Weltsch did not have a commercial driver's license or liability insurance for the vehicle at the time of the accident. Whiteley brought a motion for summary judgment under Code of Civil Procedure section 437c, subdivision (a), asserting that Vehicle Code section 5602 released it as a co-owner of the vehicle before the accident occurred.[1] In opposition to the motion, Conner challenged the admissibility of the release of liability form filed with the DMV. Alternatively, Conner argued that common law negligent entrustment provided a means of recovery that did not require co-ownership, and the case should be allowed to proceed on that theory.

The court agreed with Whiteley that, because Weltsch filed the release of liability in compliance with Vehicle Code section 5602, Whiteley was not the vehicle's co-owner, and it was entitled to summary judgment. Conner filed a motion for reconsideration of the summary judgment under Code of Civil Procedure section 1008. The court affirmed its earlier ruling, citing the legislative intent of Vehicle Code section 5602 to limit liability of previous vehicle owners who have complied with the law upon sale of a vehicle.

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[1] Vehicle Code section 5602 provides: "An owner who has made a bona fide sale or transfer of a vehicle and has delivered possession of the vehicle to a purchaser is not, by reason of any of the provisions of this code, the owner of the vehicle so as to be subject to civil liability or criminal liability for the parking, abandoning, or operation of the vehicle thereafter by another when the selling or transferring owner, in addition to that delivery and that bona fide sale or transfer, has fulfilled either of the following requirements:

"(a) He or she has made proper endorsement and delivery of the certificate of ownership as provided in this code.

"(b) He or she has delivered to the department or has placed in the United States mail, addressed to the department, either of the following documents:

> "(1) The notice as provided in subdivision (b) of Section 4456 or Section 5900 or 5901.
>
> "(2) The appropriate documents and fees for registration of the vehicle to the new owner pursuant to the sale or transfer."

III.

DISCUSSION

On an appeal from summary judgment, this court will determine independently if there is a triable issue of material fact. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850 (*Aguilar*).) We will examine "all of the evidence the parties offered . . . and the uncontradicted inferences the evidence reasonably supports. [Citation.]" (*Merrill v. Navegar, Inc.* (2001) 26 Cal.4th 465, 476.) "[D]eclarations of the moving party are strictly construed, those of the opposing party are liberally construe[d], and all doubts as to whether a summary judgment should be granted must be resolved in favor of the opposing party." (*Trop v. Sony Pictures Entertainment, Inc*. (2005) 129 Cal.App4th 1133, 1143.) Whiteley has met its burden of proof if it shows "that one or more elements of the cause of action, even if not separately pleaded, cannot be established, or that there is a complete defense to that cause of action." (Code Civ. Proc., § 437c, subd. (p)(2).)

In granting summary judgment, the court correctly overruled Conner's objection to admitting evidence of the release of liability. The effect of the release of liability and compliance with Vehicle Code section 5602 was to eliminate any basis for asserting a negligence claim against Whiteley based on his status as a co-owner of the vehicle. The only question on appeal is whether compliance with Vehicle Code section 5602 precludes the assertion of another potential negligence liability theory against Whiteley.

Conner asserts that his complaint was broad enough to be construed as alleging common law negligent entrustment against Whiteley, and there was a triable issue of material fact precluding summary judgment on that alternative theory.[2] Generally, to prevail on a negligence claim, plaintiff must show that defendant "owed them a legal duty, that it breached the duty, and that the breach was a proximate or legal cause of their injuries. [Citation.]" (*Merrill v. Navegar, Inc., supra*, 26 Cal.4th at p. 477.) Specifically for negligent entrustment, Conner must show that Whiteley entrusted a vehicle to

[2] Conner mentions a duty to maintain the vehicle on appeal yet presents no evidence nor any case law imposing a duty on one who is not the owner or operator. Conner acknowledges that "[t]his is not a vicarious (imputed) liability situation."

someone it knew or should have known was incompetent or unfit to drive, and the injury was proximately caused by the driver's disqualification, incompetency, inexperience or recklessness. (*Osborn v. Hertz Corp.* (1988) 205 Cal.App.3d 703, 708.)

First, even if Conner's complaint can be read as including a negligent entrustment claim, he has not cited any legal authority that such a claim survives compliance with Vehicle Code section 5602. In an attempt to do so, appellant cites Vehicle Code section 14606 as supportive of his alternative negligent entrustment theory, but that statute, which makes it unlawful to knowingly permit an unlicensed driver operate a vehicle, applies only when the person giving permission is the owner or has control over the vehicle. Compliance with Vehicle Code section 5602 terminated any status Whiteley had as an owner or one in control of the sold vehicle. Thus, Vehicle Code section 14606 is inapplicable here.

Nevertheless, Conner argues that he established a prima facie case of negligence entrustment because Weltsch did not have a commercial driver's license, a fact which he claims alone raises an inference that Weltsch was incompetent to operate the truck. But, Conner failed to present any evidence that, if indeed Weltsch did not have a commercial driver's license, or the fact was known or should have been known to Whiteley. The absence of that knowledge precludes a negligent entrustment cause of action. (*Lindstrom v. Hertz Corp*. (2000) 81 Cal.App.4th 644, 650; *Krawitz v. Rusch* (1989) 209 Cal.App.3d 957, 966.)

Moreover, none of the cases cited by Conner support imposition of a legal duty based on the sale of a vehicle to an unlicensed driver without an additional showing of incompetence of the driver. For example, *Talbott v. Csakany* (1988) 199 Cal.App.3d 700, involved a gift of a car to an alleged habitual drunk driver. *Allen v. Toledo* (1980) 109 Cal.App.3d 415, involved a father giving permission to his teenaged son, who had a history of reckless driving accidents, to use his vehicle, and the case did not involve transferring the title of the car.

In fact, there is serious doubt under *Dodge Center v. Superior Court* (1988) 199 Cal.App.3d 332, 338 (*Dodge*) that the sale of a vehicle to an unlicensed driver, even

where the unlicensed status is known or should be known to the seller, can give rise to an inference of negligent entrustment unless there is independent evidence of incompetence. In *Dodge*, the buyer was unlicensed, but there was no showing that the seller knew or should have known that the buyer did not have a license, or that the buyer was incompetent to drive. (*Id.* at pp. 336, 338; see also *Johnson v. Casetta* (1961) 197 Cal.App.2d 272 (reversing a nonsuit on opening statement to allow an opportunity to show actual knowledge of incompetence) The court in *Dodge* held that "the proof falls short of establishing, even for summary judgment purposes, that there are triable issues of fact as to whether Dodge . . . incurred common law liability for negligent entrustment." (*Dodge*, *supra*, at p. 338.)

Whiteley points out that, based on Conner's description of the accident, it was the deteriorated condition of the vehicle that caused the roof to fly off. The only possible action by Weltsch which could have contributed to that event was Conner's allegation that Weltsch rolled down the driver's side window just before the roof left the vehicle. On appeal from summary judgment, "even though the court may not weigh the plaintiff's evidence or inferences against the defendants' as though it were sitting as the trier of fact, it must nevertheless determine what any evidence or inference *could show or imply to a reasonable trier of fact*." (*Aguilar*, *supra*, 25 Cal.4th at p. 856, original italics.) It is not reasonable to infer that Weltsch was incompetent to drive simply because he rolled down the window of the truck, thus causing the roof to rip off unexpectedly.

We further note that, while the court in *Dodge* had serious doubts about imposing negligent entrustment liability on the seller of a vehicle because the buyer had no license of any kind, Conner cites no authority imposing negligent entrustment liability where the buyer of the vehicle lacked a *commercial* driver's license. For these additional reasons, summary judgment was correctly granted.

Lastly, as Conner acknowledges, in order for Whiteley to be liable for negligent entrustment, Conner's injuries must be "proximately caused by the driver's incompetence." (*Osborn v. Hertz Corp.*, *supra*, 205 Cal.App.3d at p. 709; *Lindstrom v. Hertz Corp.*, *supra*, 81 Cal.App.4th at p. 647.) In light of that, also fatal to any

entrustment claim is Conner's failure to present facts establishing a proximate cause connection between the alleged entrustment of the vehicle by Whiteley to Weltsch, and the accident. Even based on Conner's own description of the facts, the record is insufficient to raise a reasonable inference of proximate causation between negligence by Weltsch and the injury to Conner. Therefore, the record does not support the assertion of a common law negligent entrustment cause of action, and summary judgment is proper.

For all of these reasons, summary judgment was proper, and the trial court did not err in denying Conner's motion to reconsider.

IV.

DISPOSITION

The judgment is affirmed. Costs on appeal are awarded to Whiteley.

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RUVOLO, P. J.

We concur:

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REARDON, J.

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SEPULVEDA, J.